

**ANSI Z15.1 Standard: A Tool for Preventing Motor Vehicle Injuries and
Minimizing Legal Liability**

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Motor vehicle crashes that occur on American roadways have historically been the leading cause of occupational fatalities in this country. In the decade between 1992 and 2001, more than 13,000 civilian workers died in such incidents – accounting for 22 percent of all injury-related deaths. According to the Occupational Safety and Health Administration (OSHA), every 12 minutes someone dies in a motor vehicle crash, every 10 seconds an injury occurs and every 5 seconds a crash occurs.¹ Moreover, despite overall decreases in the number and rates of occupational fatalities from all causes, the annual number of work-related roadway deaths has actually increased to a rate of 1.2 deaths per 100,000 full time employees.² The majority of such crash victims are male (89 percent), and the toll is highest among 35-54 year old workers (47 percent).

Although, as expected, persons employed in the transportation industry make up the predominant occupational sector involved in motor vehicle crashes, other affected sectors include the service industry (14 percent), manufacturing (8 percent), and sales (7 percent). What is significant from a legal perspective is that 62 percent of the vehicles occupied by a fatally injured worker were registered to a business or to the government; 17 percent were driver-registered, and just 12 percent were registered to an entity or individual that was not connected to the driver.³

Employers whose workers are involved in such crashes have tremendous liability exposure, especially if the individuals injured or killed are third parties (non-employees), where no worker's compensation liability shield exists as an exclusive legal remedy. They bear not only the worker's compensation costs for their employees, and the potential damage awards from third party tort claims, but also the costs of equipment replacement and the indirect costs of workforce disruption and lost productivity associated with such incidents.

Motor vehicle crashes cost employers \$60 billion annually in medical care, legal expenses, property damage, and lost productivity. OSHA estimates that the average crash costs an employer \$16,500. When a worker has an on-the-job crash that results in an injury, the cost to their employer is \$74,000. Costs can exceed \$500,000 when a fatality is involved.⁴ If punitive damages are awarded, that figure can soar into the millions of dollars per incident.

¹ See http://www.osha.gov/Publications/motor_vehicle_guide.html.

² Centers for Disease Control, *Roadway Crashes Are the Leading Cause of Occupational Fatalities in the U.S.*, DHHS (NIOSH) Publication No. 2004-137(March 2004).

³ Census of Fatal Occupational Injuries (CFOI), 1992-2001, Bureau of Labor Statistics, and Fatality Analysis Reporting System (FARS), 1997-2002, National High Traffic Safety Administration (NHTSA).

⁴ See NHTSA, *The economic burden of traffic crashes on employers: costs by state and industry and by alcohol and restraint use*. Publication DOT HS 809 682 (2003).

The actions of drivers employed by a company, including their failure to inspect the motor vehicle for defects as well as any unsafe behaviors while driving a company vehicle, can be imputed to the employer under the legal theory of *respondeat superior*.⁵ Under this analysis, in the event of a work-related accident on a public roadway, all a tort attorney will need to demonstrate in order to name the employer as defendant in a personal injury or wrongful death lawsuit is that the company exercised some degree of control over the driver, and that the accident occurred while the driver was acting in the course of the employment relationship. Each state will apply its own twist to the vicarious liability doctrine.⁶

Other legal fault doctrines that can apply to employers arising from occupational motor vehicle incidents include:

- Negligent hiring/retention (failure to exercise due care when hiring workers who will drive in the course of their activities by checking driving records etc.)⁷;
- Negligent supervision (failing to take corrective action where the employer becomes aware of prior incidents, tendencies toward aggressive or distracted driving);
- Negligent training (failure to provide appropriate documented training for the type of vehicle that the worker will operate); and
- Owner liability (failure to ensure that its agents inspect the vehicles appropriately to prevent operation with known defects, or negligent entrustment of the owner's vehicle to an unqualified or impaired individual).⁸

Even in those situations where the employer's own workers are the only victims of roadway incidents, there may be exclusions if the employer is found to be grossly negligent, as certain states permit tort actions to go forward in such circumstances or enhance the monetary awards available under worker's compensation programs.

⁵ *Respondeat superior*, or "vicarious liability," is a key doctrine in the law of agency, which provides that a principal (employer) is responsible for the actions of his/her/its agent (employee) in the "course of employment. By definition, motor vehicle accidents that occur while a worker is in the course of his employer's business (whether or not operating an employer-owned vehicle) would fall within the scope of this legal theory, and the driver's negligence would be imputed to the employer for purposes of litigation.

⁶ For example, under Maryland law, courts focus on whether the incident arose from employees' activities within the scope of the employment. To satisfy the legal test, the conduct must be of the kind the employee is employed to perform and must occur during a period not unreasonably disconnected from the authorized period of employment in a locality not unreasonably distant from the authorized area, and actuated at least in part by a purpose to serve the employer. See *Jordan v. Western Distributing Company*, 135 Fed.Appx. 582 (4th Cir. 2005). The conduct must also be expectable or foreseeable. *Sawyer v. Humphries*, 587 A.2d 467, 471 (Md. 1991).

⁷ This cause of action focuses on the employer's negligence in selecting the individual as an employee, rather than on the employee's wrongful act itself. See *Van Horne v. Muller*, 705 N.E.2d 898 (Ill. 1998). In a negligent selection claim, there normally is a rebuttable presumption that an employer uses due care in hiring an employee. See, e.g., *Evans v. Morsell*, 395 A.2d 480, 483 (Md. 1978).

⁸ However, if the employer is a governmental entity, sovereign immunity may apply.

Thus prevention through development of proactive initiatives is critical to preserve life, property and to avoid incurring the monetary costs associated with occupational motor vehicle incidents. The Liberty Mutual Insurance Company reported in 2001 that 61 percent of surveyed business executives believe their companies receive a Return on Investment of \$3.00 or more for every \$1.00 they spent on improving workplace safety.⁹ In the case of occupational motor vehicle incidents, the underlying causes of these fatalities and injuries vary widely from mechanical failure to poor highway and vehicle design to driver error. Preventive measures also vary widely, including preventive vehicle maintenance, increased seat belt use, effective driver training, anti-lock brakes, road maintenance and safer vehicle design.

The causes and solutions are so varied that there is no single, simple strategy for prevention. There is, however, a new tool that can be utilized by employers, consultants, insurance industry experts, and other safety and health professionals to help reduce the occupational casualties, high costs, and legal liability associated with motor vehicle incidents. The American Society of Safety Engineers has released the ANSI Z15.1-2006 national consensus standard, *Safe Practices for Motor Vehicle Operations*.

The standard, approved by ANSI on February 15, 2006, took effect on April 28, 2006. It provides guidelines and establishes best practices for development of motor vehicle safety programs for all classes of employers – whether addressing a single vehicle or a fleet, whether the equipment is employer-owned, employee-owned, or leased from a third party.¹⁰ It includes such key components as:

- Management, leadership and administration;
- Operational environment;
- Driver considerations;
- Vehicle considerations; and
- Incident reporting and analysis.

As noted in the ANSI Z.15.1, when developing a program to control risks associated with motor vehicle operation, it is critical to include both operator training and qualification criteria as well as a system for inspecting and maintaining the equipment. Although inspections are normally conducted in a systematic way by drivers who have commercial driver's licenses and operate large trucks that require CDL compliance, this step is too often ignored for passenger vehicles or for smaller trucks that may be used by sales and service personnel.

The Z15.1 standard includes these components, as well as methodologies for recordkeeping, reporting of motor vehicle-related incidents and data/trend analysis that can be used to prevent recurrences. This is a particularly significant component from a legal perspective, as employers who are found to have actual knowledge of program

⁹ See Liberty Mutual Insurance Company, *Liberty Mutual Executive Survey of Workplace Safety* (2001).

¹⁰ The standard is not intended to apply to off-road equipment, agricultural equipment, recreational vehicles, haul trucks operated solely on industrial or mine sites, or unlicensed equipment.

failures or unsafe actions/conditions and who fail to take appropriate remedial action are much more likely to be found grossly negligent in the event of a subsequent incident. This can, of course, lead to high dollar OSHA penalties,¹¹ as well as punitive damages in the tort law arena arising from personal injury or wrongful death suits. In particularly egregious circumstances, there could even be criminal prosecutions targeting management personnel who were aware of deficiencies and failed to take appropriate corrective action.

Among the critical features of the ANSI Z15.1 standard are attention to driver error and the risk factors arising from driver impairment and distraction as well as the high-profile issue of aggressive driving practices, which is being criminalized in some states. The standard also emphasizes safety considerations when purchasing or modifying motor vehicles.

The standard could be used as an affirmative defense during litigation. As a recognized national voluntary consensus standard (benchmark), an employer potentially could use the standard as an indicator that it implemented programs to enhance safety for its motor vehicle operations. Use of the standard, and the ability to document compliance with the standard, could also be used as an affirmative defense when contesting federal and state citations.

In the 1990s, motor vehicle safety was designated as one of the Occupational Safety and Health Administration's priority issue areas.¹² In July 1990, OSHA issued a Notice of Proposed Rulemaking for a standard, which would have required seat belt use and driver awareness programs.¹³ Although this rulemaking effort was stalled, in part due to congressional action that urged OSHA to further study the issue before proceeding, the agency can still regulate this recognized threat to safety through Section 5(a)(1) of the OSH Act, the "General Duty Clause."¹⁴

It should be noted that the standard does include this language in the Foreword section of the standard: *This standard is not intended to serve as a guide to governmental authorities having jurisdiction over subjects within the scope of the Z15 Accredited Standards Committee (ASC).* But even absent formal rulemaking, ANSI Z15 serves as a valuable reference. It also could have possible enforcement ramifications under the

¹¹ In addition to utilizing the ANSI Z-15.1 standard as a resource in program development, employers should also be aware of OSHA Guidelines for Employers to Reduce Motor Vehicle Crashes, which can be found at: http://www.osha.gov/Publications/motor_vehicle_guide.html.

¹² Today, OSHA continues to focus on this subject through its Alliances, including those with ASSE, the Independent Electrical Contractors, the Air Conditioning Contractors of American, the Network of Employers for Traffic Safety and the National Safety Council.

¹³ The Occupational Safety and Health Administration's proposed rule was published at 55 FR 28728 (July 12, 1990). That rule contained a mandatory safety belt requirement applicable to anyone driving or occupying any motor vehicle that is company owned, leased or rented or privately owned when used for official business on public highways and off highway. In addition, it included a driver training requirement for workers operate motor vehicles for official business on highway and off highway.

¹⁴ Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act) requires employers to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees".

General Duty Clause (discussed above) by federal OSHA. It may be employed to satisfy regulatory requirements of certain state-plan OSHA programs. A number of States have enacted laws mandating such traffic management programs for employers,¹⁵ so adoption of ANSI Z15 potentially at the state level may satisfy the compliance obligations for employers in those jurisdictions. Insurance companies encourage their client companies to implement safety and health management programs, and therefore utilization of Z15 potentially could generate monetary savings on insurance (both liability and worker's compensation).

The OSH Act covers every employer engaged in a business affecting interstate commerce who has one or more employees. By contrast, the Secretary of Transportation, acting through the Office of Motor Carrier Safety (OMCS), exercises statutory authority over the operation of motor vehicles engaged in interstate or foreign commerce.¹⁶ However, the Department of Transportation still defers to OSHA to enforce safety related to motor vehicles where the Federal Motor Carrier Safety Administration standards in Title 49 of the Code of Federal Regulations do not address particular safety issues. Thus, reduction of work-related motor vehicle accidents is properly part of OSHA's 2003-2008 Strategic Management Plan. Of course, the U.S. Department of Transportation reserves the authority to regulate "commercial motor vehicles" which include, among others, vehicles with a gross vehicle weight rating of 10,001 pounds.¹⁷

Moreover, the National Advisory Committee on Occupational Safety and Health has recommended that OSHA promulgate a standard addressing motor vehicle safety, and that it involve other governmental agencies as well as safety organizations. Under OMB Circular A-119, which requires that any federal government agency rulemaking consider extant consensus standards and adopt those standards where feasible, the ANSI Z15.1 standard could eventually be incorporated by reference into a future OSHA rulemaking on this issue. OSHA also has a memorandum of understanding with ANSI (1/19/2001). The memorandum notes that: *ANSI and OSHA will maintain a mechanism for consultation in the planning of occupational safety and health standards development activities in the areas of mutual concern to the extent consistent with OSHA policy and section 6 of the OSH Act;*

¹⁵ See, e.g., Cal-OSHA's standard at <http://www.dir.ca.gov/title8/8406.html>.

¹⁶ OMCS authority is found in title 49 of the United States Code in the following sections: 3101 et seq.; 2301 et seq. (known popularly as the Surface Transportation Assistance Act); 1801 et seq., dealing with the transportation of hazardous materials; and 2501 et seq. (known popularly as the Motor Carrier Safety Act of 1984).

¹⁷ See, e.g., 49 USC §31132. Another distinguishing factor is that the term "employer" under the Motor Carriers Safety Act of 1984 means ". . . any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it," but such term does not include Federal, State, and local governments. Thus, in the case of the term "employer" under the Motor Vehicle Safety Act, there is a limitation on the OMCS jurisdiction. If, in any factual circumstances involving a section 4(b) (1) controversy between OSHA and the OMCS, where the employer does not come within the Motor Carrier Safety Act's definition of the term "employer," OSHA would have jurisdiction over the employer's working conditions and could enforce unsafe conditions or actions imputable to the employer under the General Duty Clause.

The OMB Circular (consistent with Section 12(d) of the National Technology Transfer Assistance Act (NTTAA)) directs agencies to use national consensus standards in lieu of developing government-unique standards, except when such use would be inconsistent with law or otherwise impractical. However, under the current OSH Act, only national consensus standards that have been adopted as, or incorporated by reference into, an OSHA standard pursuant to Section 6 of the OSH Act provide a means of compliance with Section 5(a)(2) of the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. (“the OSH Act”).¹⁸ Therefore, at some future time, Z15 could be adopted by OSHA as a mandatory safety and health standard through notice-and-comment rulemaking.

Another significant area of possibility would be development of consent orders with government agencies involving motor vehicle operations. There is the possibility of the standard being used as a benchmark for an employer to use in establishing such programs. The use of voluntary national consensus standards to settle such cases is a common practice and there is the possibility of Z15 being used in such a manner.

From a defensive strategy, employers who adhere to the recommendations in ANSI Z15.1 will not only see a reduction in the motor vehicle incidence rate but will also have appropriate documentation, such as written motor vehicle safety programs, safety policies, and maintenance programs and records, to reduce the likelihood litigation in the first instance because of the due diligence provided to elimination of motor vehicle risk factors. Application of ANSI Z15.1’s recommendations concerning driver recruitment, selection and assessment, orientation and training, and impaired/distracted/aggressive driver prevention programs, can also be useful in defeating claims of negligent recruitment and retention of employees that might otherwise arise in third-party injury actions.

Finally, the attention to regulatory compliance and management program audits will help minimize the potential for enforcement actions brought by OSHA under the General Duty Clause, relevant DOT agencies, or even state and local governmental agencies under traffic and criminal laws.

Finally, ANSI Z15 has possible value in constructing settlement agreements or consent orders with federal OSHA, state-plan OSHA agencies or other state and federal transportation related agencies. Often employers who have systemic safety problems will be encouraged or required, as a condition of abatement or settlement, to design and implement programs that will address management failures in a cohesive manner. The scope and function of Z105 would likely satisfy the enforcement goals of prevention of future safety issues while encouraging penalty reductions to offset the costs of program implementation. There is the strong potential of the standard being included in settlement proceedings for occupational safety and health citations involving motor vehicle operations.

¹⁸ Specific national consensus standards [e.g., American National Standards (ANSI) standards], which the Secretary of Labor adopted on May 29, 1971, were either used as a source standard and published in Part 1910 as an OSHA standard or explicitly incorporated by reference in an OSHA standard.

SH&E professionals should be encouraged to take the following actions:

- Obtain a copy of this standard, review the standard and the background materials about it, and discuss it with senior management and legal counsel so that all parties are aware of what is expected. A legal opinion written by corporate counsel would also be a prudent action to take.
- Write and publish a policy addressing Z15 in regard to how it fits in with the organization's current program and the U.S. Occupational Safety and Health Act and the rules and regulations of the U.S. Department of Transportation. Write, implement, and document communication structures detailing how information is passed up the communication chain to senior management.
- Conduct thorough assessments to identify significant SH&E exposures and the means used to communicate them to those in a position of authority.
- The Z15 Standard potentially could place accountability on senior management. There is some correlation with the requirements of Sarbanes Oxley Act of 2002 Public Law 107-204. It is important to ensure that SH&E audits are independent and that the results are reported and acted upon. Those ES&H practitioners who author/sign those audit reports and who fail to follow-up on the recommended actions may be subject to sanctions such as listed under the new law. The point has been made that they now have a duty that goes beyond just informing management.
- Follow the ASSE Code of Conduct.

In summary, ANSI Z15 provides safety and health professionals with a significant new tool to help enhance existing program design or to help smaller employers create a program that can protect workers while at the same time satisfying regulatory entities and insurers, effectuating cost savings and minimizing legal liability.

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Adele L. Abrams is an attorney, safety professional and trained mediator who represents employers and contractors nationwide in OSHA and MSHA litigation, and in worker's compensation and other employment matters. She also provides safety, health and environmental training and consultation services to both small and large businesses. She is president of the Law Office of Adele L. Abrams P.C. in Beltsville, MD.

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